

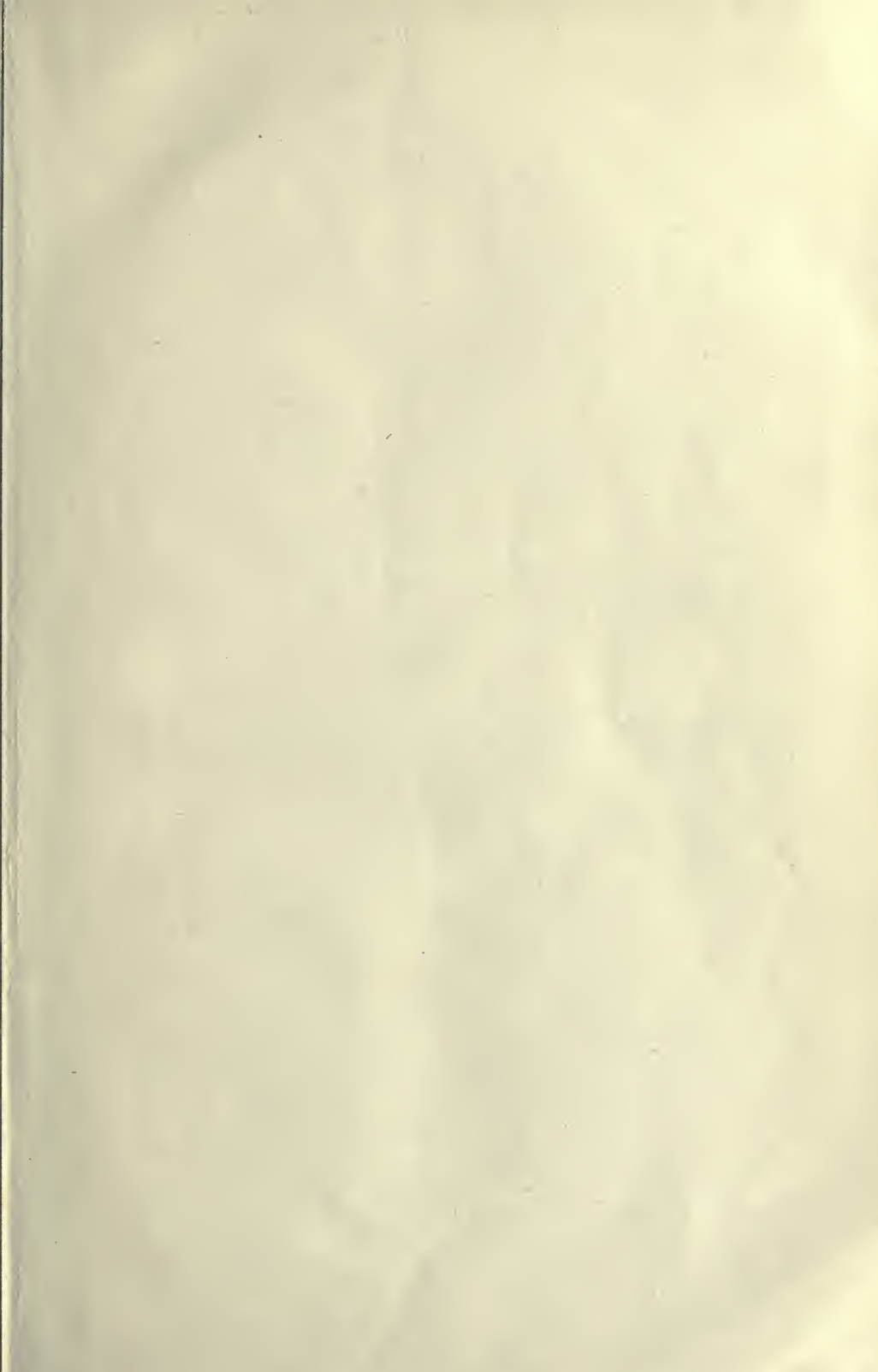
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Senate Bill No. 172

West. Va. Laws.

Introd. Jan. 22, 1916

A BILL to prevent fraud in the sale and disposition of stocks, bonds, notes, contracts, or other securities, and certain real estate, sold or offered for sale, within the state of West Virginia, and providing penalties for the violations thereof.

Be it enacted by the Legislature of West Virginia:

Sec. 1. That no person or persons mentioned in section six 2 of this act, shall, as principal or agent, promote by advertisement, 3 circular, prospectus, or any other form of public or general offer- 4 ing, inducement or persuasion, the issuance, transfer, distribution, 5 sale or negotiation of any speculative securities, as hereinafter de- 6 fined in section two of this act; unless prior thereto he, or they, 7 shall have filed with the auditor of this state, duly verified by his, 8 or their, oath or affirmation, and accompanied by a filing fee of five 9 dollars, a statement containing the following:

10 *Provided, however,* that this section shall not apply to a *bona*
11 *fide* offer directly made to banks, bankers, brokers or trust compa-
12 nies who deal in such securities.

13 (a) A copy of the securities so to be promoted.

14 (b) A copy of the charter, or articles of association, and by-
15 laws, and such other information as may be necessary to

16 establish the character of the promotion and validity and
17 value of the securities, not otherwise referred to in this sec-
18 tion.

19 (c) A statement in substantial detail of the assets and liabilities
20 of the person or company issuing such securities, and of
21 any company or person guaranteeing the same, including
22 specifically the total amount of such securities, and of any
23 securities prior thereto, in interest or lien.

24 (d) If such securities are secured by mortgage or other lien, a
25 copy of such mortgage or of the instrument creating such
26 lien, and a competent appraisal or valuation of the proper-
27 ty covered thereby, with a specific statement of all prior
28 liens thereon, if any.

29 (e) A full statement of facts showing the gross and net earn-
30 ings, actual or estimated, of any person or company issu-
31 ing or guaranteeing such securities, or of any property cov-
32 ered by any such mortgage or lien.

33 (f) All knowledge or information in the possession of such
34 promoter, relative to the character or value of such securi-
35 ties, or of the property or earning power of the person or
36 company issuing or guaranteeing the same; including a
37 statement that such promoter has fully investigated the

38 same, and believes the facts as stated to be reliable and true,
39 with such exceptions, if any, as may be stated.

40 (g) A copy of any prospectus or advertising matter which is
41 to be used in connection with such promotion. Such pros-
42 pectus shall contain a clear and concise statement of the
43 amount of money estimated as necessary to carry out the ob-
44 jects of the promotion; the price at which it is intended to
45 sell securities; the amount of promotion expense, commis-
46 ~~X~~sions and other overhead expenses contemplated and the net
47 amount to be derived by the company from the sale of each
48 share of stock, bond, note, contract or other security; and
49 no prospectus or other advertising matter shall be used
50 unless the same has been filed hereunder. But in case no
51 prospectus or advertising matter is filed or used, a state-
52 ment containing the information referred to in this sub-
53 section shall be filed with the auditor.

54 (h) The names and addresses of any agents by or through
55 whom any securities are to be sold in this state. And no
56 agent shall be employed or act unless such statement with
57 respect to them has been filed hereunder.

58 (i) The names and address of such promoter, including the
59 names and addresses of all partners, if the promoter be a
60 partnership, and the names and addresses of the directors

61 and trustees (and of any and all persons owning ten per
62 centum or more of the capital stock), if the promoter be a
63 corporation or association.

64 (j) Compliance by any person or persons mentioned in section
65 six of this act, with the provisions of this section, shall *ipso*
66 *facto* operate to appoint the auditor of this state as his, or
67 their attorney-in-fact, irrevocable, for the specific purpose
68 of receiving service of notices and processes which may be
69 issued against him, or them, in any action arising out of
70 the promotion, negotiation, issuance, transfer, distribu-
71 tion, or sale by him, or them, in this state of any of the
72 speculative securities concerning which such compliance is
73 made; and the service of any such notice or process on said
74 auditor, or his acceptance of service endorsed thereon shall
75 be equivalent for all purposes to, and shall be and consti-
76 tute due and legal service of such notice or process upon
77 any such person or persons.

78 (k) Immediately after being served with or accepting any such
79 process or notice, the auditor shall file a copy of such pro-
80 cess or notice with a note thereon endorsed of the time of
81 service or acceptance, as the case may be, and transmit such

82 process or notice by registered mail to the head office of
83 such person or persons.

84 (1) Suits and actions may be commenced against such person
85 or persons in the proper court of any county in this state
86 in which a cause of action may arise, or in which the plain-
87 tiff may reside.

Sec. 2. The term "speculative securities", as used in this act,
2 shall include all the stocks and securities mentioned in section six
3 of this act, which shall, in their subscription, issuance, sale, trans-
4 fer, negotiation or distribution, be represented to yield a profit to
5 to the purchaser, or other transferee of more than eight per centum
6 on the price at which they are offered.

Sec. 3. No person or persons described in section six of this
2 act, and not coming within the terms of section two of this act,
3 shall, as principal or agent, promote by advertisement, circula-
4 tion, prospectus, or any other form of public or general offering,
5 inducement or persuasion, the issuance, sale, transfer, negotiation
6 or distribution of any of the securities mentioned in section six of
7 this act, without first having notified the auditor, describing such
8 securities. And if it shall appear therefrom, or from any investiga-
9 tion which the auditor is hereby authorized to make, that such in-
10 formation is not sufficient to determine the character and value
11 of such securities, or of such promotion, or of the honesty thereof,

12 then such securities shall be taken and deemed to be speculative,
13 under the terms of the preceding section hereof; and after notice
14 in writing by the auditor of state, such securities shall be subject
15 to the provisions of this act regarding speculative securities.

Sec. 3-a. The listing and necessary description of any securi-
2 ties, with the price thereof, in any sales list distributed or adver-
3 tised by any dealer in securities shall be subject to the provisions
4 of this section.

Sec. 4. (I.) In the case of a person or persons mentioned
2 in section six of this act, not yet on a dividend paying basis, if
3 more than five hundred dollars in cash, or the equivalent at par in
4 the stocks or securities to be promoted, has been or is to be paid
5 or issued for intangible assets or property taken over by such per-
6 son or persons, a subscription blank showing the amount of such
7 payment or issue, and such other information in connection there-
8 with as may be deemed necessary by the auditor, shall be filed with
9 said auditor, and subscriptions or applications for said stocks and
10 securities shall be recognized by such person or persons only when
11 made upon such subscription blank, and signed by the subscriber
12 or applicant.

13 The auditor may require stocks or securities, issued or to be
14 issued for property or intangible assets as aforesaid, to be deposited
15 in escrow under such terms as he may prescribe.

16 (II.) In the case of stocks, the total promotion expense shall
17 not exceed ten per centum of par value of stock sold, and if sold
18 at less than par, ten per centum of the selling price.

19 In the case of bonds, notes, contracts, or other securities, the
20 total promotion expense shall not exceed five per centum of par
21 value.

22 (III.) The provisions of sections one, two and three of this
23 act shall not apply to the stocks of state and national banks(build-
24 ing and loan associations, and corporations not organized for prof-
25 it; nor to other stocks and securities.

26 (a). When sold pursuant to the order of any court;

27 (b). When sales are confined to the old stockholders of the is-
28 suing company;

29 (c). When the issue is taken by the incorporators only as *bona*
30 *fide* final holders;

31 (d). When the issue is taken by the stockholders, bondholders,
32 or incorporators in connection with a merger;

33 (e). When *bona fide* private holdings of promoted stocks, bonds,
34 notes, contracts or other securities are offered for sale.

35 (IV.) All the provisions of this section shall apply to
36 both speculative and non-speculative securities.

Sec. 5. The auditor shall immediately examine the papers
2 submitted under section one of this act; *provided*, that as to any

3 of the papers required to be filed under sub-paragraphs (c), (d)
4 and (e) of section one, the auditor may waive same, or any part
5 thereof, if he has on file sufficient information believed by him to
6 be reliable with reference thereto.

7 If the provisions of this act are complied with, the auditor
8 shall give notice to the applicant that the papers have been filed,
9 and notice from the auditor of said filing shall, so long as it re-
10 mains unrevoked, be conclusive evidence of compliance with this
11 act.

12 If, from the examination of such papers, or of any additional
13 information or proof, or by reason of the failure to file any infor-
14 mation or proof required as aforesaid, it shall appear that the issu-
15 ance,, transfer, sale; promotion, negotiation or distribution of
16 such stocks or securities, constitutes, or would constitute, a viola-
17 tion of this act, the auditor shall so notify such applicant in wri-
18 ting; and no such applicant or other person shall thereafter issue,
19 transfer, sell, promote, negotiate or distribute any such stocks
20 or securities or commit any overt act in connection therewith.

21 Any person aggrieved by the decision of the auditor of state
22 under this section, shall within sixty days thereafter, have the
23 right to petition any court having jurisdiction, or the judge there-
24 of in vacation, for a writ of mandamus, or for other appropriate
25 remedy, provided by existing law, for the correction of said decis-

from the beginning of the wor

26 ion, if the same be erroneous or unjust, or without jurisdiction.

Sec. 6. Any person, co-partnership, association or domestic
2 corporation, or foreign corporation, doing business within the
3 state of West Virginia, or any or all of the officers or agents there-
4 of, alone or in conjunction with others, having devised or intend-
5 ing to devise any scheme or artifice to defraud any person or per-
6 sons by securing subscriptions for, or by promoting or negotiating
7 the issuance, transfer, distribution or sale of any stocks, bonds,
8 notes, contracts, or other securities, of any kind or character, who
9 shall, for the purpose of executing or attempting to execute, such
10 scheme or artifice, commit any overt act within this state, shall be
11 guilty of a felony, and upon conviction thereof, shall be punished
12 by a fine of not more than five thousand dollars, or by imprison-
13 ment in the penitentiary for not more than five years, or by both
14 such fine and imprisonment, at the discretion of the court.

Sec. 7. If any person or persons mentioned in section six of
2 this act, with intent to induce the purchase of any of the securi-
3 ties mentioned in section six of this act; or of any real estate sit-
4 uate outside of this state, shall knowingly or recklessly make any
5 false statement, either oral or written, or knowingly or recklessly
6 conceal any fact materially affecting the value of any such securi-
7 ties, or of such real estate, he or they shall be guilty of a felony,
8 and upon conviction thereof, shall be punished by a fine of not

9 more than one thousand dollars, or by imprisonment in the peni-
10 tentiary or county jail for not more than twelve months, or by
11 both fine and imprisonment, at the discretion of the court; and
12 shall be liable in damages to any party who has been occasioned
13 loss thereby.

Sec. 8. Any person, whether as principal or agent, who shall know-
2 ingly make or file, or cause to be made or filed, any statement, cir-
3 cular, prospectus or other advertising matter required by this act,
4 which is materially false, shall be guilty of a felony and subject to
5 punishment as provided in section six hereof.

Sec. 9. Upon request of the auditor, the attorney general, or
2 the prosecuting attorney having jurisdiction, shall direct and con-
3 trol any prosecution for violation of this act.

Sec. 10. No person or persons, mentioned in section six of
2 this act, and operating within the scope of sections one and two
3 of this act, shall make any amendments to his or their charter, ar-
4 ticles of incorporation, constitution, or by-laws, or any other change
5 materially affecting any statement or representation made in his
6 or their statement filed under section one hereof, unless he or they
7 first prepare and file with the auditor a duly verified supplemental
8 statement, setting forth clearly and concisely all material facts in
9 connection with the change, which said supplemental statement

10 shall be subject in all respects to the provisions of section one here-
11 of in like manner as the original.

Sec. 11. Any person or persons mentioned in section six of
2 this act, and operating within the scope of sections one and two
3 of this act, may appoint one or more agents; but no agent shall
4 act, or attempt to act for or in behalf of his principal, until he
5 shall have first registered with the auditor as such agent, and for
6 each registration, such person or persons shall pay to said auditor
7 a registration fee of two dollars. Such registration shall authorize
8 the agent to represent such person or persons so registering him
9 until the first day of July following, unless the registration is
10 theretofore cancelled and recalled by such person or persons, or
11 by the auditor, for failure to comply with the provisions of this
12 act; authority for which revocation or cancellation is hereby given
13 to such person or persons and to said auditor. ,

Sec. 12. Every person or persons mentioned in section six
2 of this act, and operating within the scope of sections one and two
3 of this act, shall file as of the close of business on June thirtieth of
4 each year, and at such other times as may be required by the audi-
5 tor, a sworn statement in such forms as may be prescribed and fur-
6 nished by the auditor, setting forth his or their financial condition,
7 the amount of assets and liabilities, and such other information as
8 the auditor may require. Every regular statement of June thir-

9 tieth shall be accompanied by a filing fee of two dollars; and if
10 such person or persons fail, neglect or refuse to file his or their
11 regular statement within fifteen days from said date, or to file any
12 other special report herein provided for within thirty days from
13 receipt of request therefor, then the right of such person or per-
14 sons to transact business in this state shall be deemed to be in
15 abeyance during the continuance of such delinquency.

Sec. 13. The auditor shall have general supervision and con-
2 trol over any person or persons mentioned in section six of this
3 act, residing or doing business in this state, engaged in securing
4 subscriptions for, or in the issuance, transfer, sale, promotion, ne-
5 gotiation or distribution of any speculative securities, and every
6 such person or persons shall be subject to examination by said au-
7 ditor, or by his duly authorized deputies at any time he may deem
8 it advisable. The rights, powers and privileges of the auditor in
9 making such examinations shall be the same as now provided with
10 reference to the examination of insurance companies by the insur-
11 ance commissioner; and such person or persons shall pay the ex-
12 pense of such examination, and their failure or refusal to pay
13 upon the demand of the auditor shall work a forfeiture of their
14 right to do business in the state.

Sec. 14. Any person or persons mentioned in section six of
2 this act, shall keep proper records and books of accounts in a busi-

ness like and intelligent manner, which shall be open to the inspection of stockholders and investors in their stocks or securities.

Sec. 15. Whenever it shall appear to the auditor that any person or persons who have complied with the provisions of this act are insolvent, or are conducting their business in such manner as to jeopardize the interests of creditors or investors, or whenever they shall fail, neglect or refuse to file any circulars, papers, statements, prospectuses, documents or other advertising matter or reports, or to pay any of the fees required or provided for by this act, without satisfactory reason therefor, the auditor may report the facts to the attorney general, or to the prosecuting attorney having jurisdiction, who shall at once make an investigation of the case and institute such proceedings in law or in equity in the name of the state, in any circuit court having jurisdiction as may be appropriate to enforce the provisions of this act, and to protect the interests of stock and bondholders and other creditors and investors. The jurisdiction of the circuit court shall extend to the enforcement of any proper remedy now existing for the protection of any creditor, stockholder, bondholder, or other person beneficially interested, and the suit, action or proceeding may be brought in any county in which any one or more of the parties reside, or in Kanawha county.

Sec. 16. Should the courts of this state declare any section

2 or provision of this act unconstitutional or unauthorized, or in
3 conflict with any other sections or provisions of this act, then such
4 decision shall affect only the section or provision so declared to be
5 unconstitutional or unauthorized, and shall not affect any other
6 section or part of this act.

Sec. 17. All corporations, companies, associations, partner-
2 ships and individuals now holding the statement or license of the
3 auditor, under chapter fifteen, acts one thousand nine hundred and
4 thirteen, shall be deemed to have complied with the provisions of
5 this act.

Sec. 18. All expenses and fees herein provided for shall be col-
2 lected by the said auditor, and shall be accounted for and turned
3 into the state treasury, and the amount of the expenses and fees so
4 turned into the state treasury are hereby re-appropriated to the said
5 auditor for the purpose and in an amount sufficient to pay the cost
6 and expense of carrying this act into effect; and the said auditor is
7 hereby authorized to appoint an additional clerk, if the same shall
8 be found by him to be actually and absolutely necessary, to carry
9 this act into full force and effect. All money actually and neces-
10 sarily paid out, or expenses incurred by the said auditor, or any
11 clerk under his direction, under this act, shall be paid by the state
12 treasurer out of such sums for expenses and fees received under
13 this act, upon the state auditor's warrants, to be issued upon vouch-

14 ers containing an itemized account of the salaries or expenses for
15 which the same are issued.

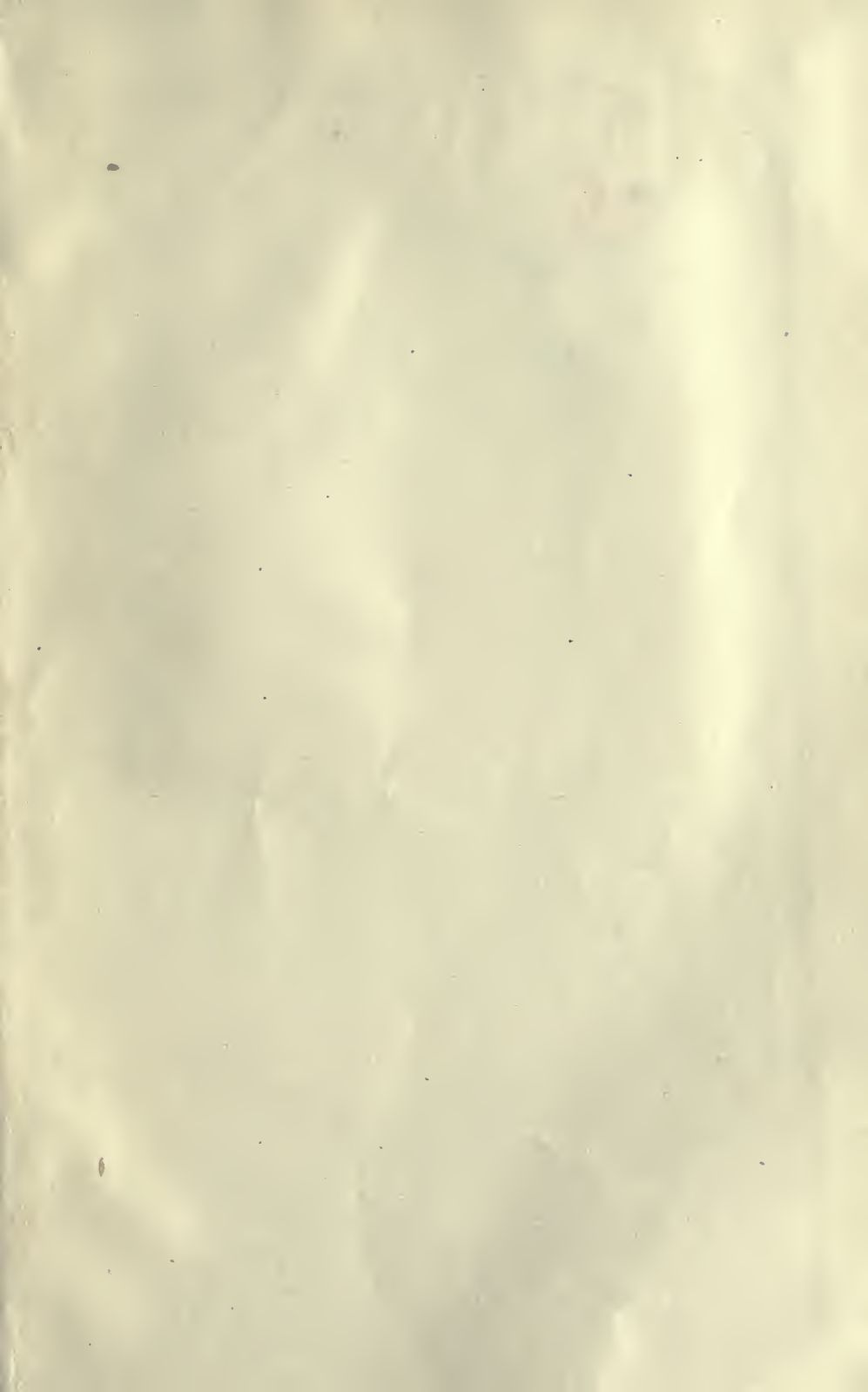
16 All expenses and fees which have been collected by the auditor
17 under the provisions of chapter fifteen of the acts of one thousand
18 nine hundred and thirteen, and now remaining in the state treas-
19 ury, are hereby appropriated to the said auditor for the purpose
20 of this act.

Sec. 19. "Person or persons" as used in this act, shall in-
2 clude any person, co-partnership, association, domestic corporation
3 or foreign corporation.

Sec. 20. Any person or persons violating any of the provis-
2 ions of the preceding sections of this act, for which no specific pen-
3 alty is provided, shall be fined not more than five hundred dollars,
4 or imprisoned in the county jail for not more than thirty days, or
5 both at the discretion of the court.

Sec. 21. This act shall take effect from date of passage.

Sec. 22. Chapter fifteen, of the acts of one thousand nine
2 hundred and thirteen, and all acts and parts of acts in conflict
3 herewith, are hereby repealed.



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